

***Justice ADR Strategy Project
Research Findings and Strategic Implications***

*Presentation to the 3rd National Alternative Dispute Resolution
Research Forum*

***PowerPoint Presentation by Paul Myers
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Context

- *Growing Victoria Together*
 - Safer communities, increased community cohesion, responsive justice system
- *Justice Statement 2004*
 - To undertake a review of alternative dispute resolution
- *DOJ Strategic Priorities 2006-07*
 - Develop a strategy for Alternative Dispute Resolution Strategy
- *Government's Election Commitments 2006*
 - Provide Victorians with more and low cost means of resolving legal disputes

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Background

- Arrangements for the delivery of ADR possess many of the characteristics of a service industry, that supplies a service to meet a demand, but with important differences:
 - Free of charge to most users
 - Produces public value rather than private profits
- Need for research to highlight challenges facing the ADR sector. The first stage of the project focused on:
 - research around the supply and demand perspectives
 - application to policy and strategy

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Background

- **Research method:**
 - Views & data from suppliers and other experts:
 - Literature review
 - Interviews with opinion leaders and experts
 - Qualitative and quantitative survey of services
 - Questionnaire based survey of the community

- **Encapsulated in the reports:**
 - *ADR in Victoria: Supply Side Research Report 2007*
 - *ADR Supplier Survey 2006*
 - *ADR in Victoria: Community Survey Report 2007*

All released progressively to participants and the community

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Prevalence & Cost of Disputes

- Information on the prevalence and cost of disputes in general places dispute resolution in context of other competing government priorities
- Research shows:
- **Disputes are prevalent across the broader community:**
 - 35% of all Victorians were involved in at least one dispute (12 months to March 2007)
 - 3.2 million disputes
 - 1.7 million consumer disputes -
 - 477,000 electricity, water, gas or phone (involving 8% of Victorians),
 - 204,000 credit, debt, banking, finance or insurance (involving 4% of Victorians)
 - 1.4 million family, neighbourhood and association disputes:
 - 304,000 neighbourhood disputes over trees, fences, noise (involving 5% of Victorians)
 - 297,000 family disputes over relationships, parenting, money (involving 6% of Victorians),
 - 267,000 workplace disputes over unfair treatment, discrimination, dismissal (involving 4% of Victorians)
 - 185,000 government disputes
- **Cost to Victorians of dispute resolution is substantial:**
 - \$2.7 billion cost of attempts to resolve serious disputes
 - high or very high emotional cost associated with serious disputes:
 - 87% of serious family, neighbourhood and association dispute
 - 91% of serious consumer dispute

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Sustaining Community Capability for Dispute Resolution

- The absence of dispute resolution skills in the community can be a factor in the spread & persistence of disputes that fragment communities.
- Research shows:
 - Victorians have a strong capacity for self-directed dispute resolution:
 - 15% of disputes involved a 3rd party - 85% of disputes did not involve a 3rd party
 - 75% (2.1 million) of disputes were resolved
 - 89% of Victorians said they will mostly/always try to resolve a dispute themselves, while some took self-directed dispute resolution to an extreme:

- 12% of Victorians see ADR as a step to be taken after their own efforts have failed
- 9% of Victorians see ADR as a last resort
- Participation in ADR supports self-directed dispute resolution - a majority of Victorians felt more confident in attempting to resolve disputes after using ADR
- Direct information and advice appears to have a limited role in self-directed dispute resolution:
 - 51% will mostly/always rely on family and friends for information and advice
 - embedding knowledge in the community is probably more effective for these people
 - 33% will always/sometimes rely on external agencies for information and advice
 - Disadvantaged persons show results similar to the general population
- Self-directed dispute resolution plays an important role in demand management, however, measures to support and strengthen this approach need to extend beyond direct information and advice services.

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Targeting Serious Disputes (1)

- Measures to improve access would be framed around factors driving assistance seeking behaviour.
- Research shows:
 - **Awareness of ADR suppliers is variable:**
 - high levels of recognition for Consumer Affairs Victoria (92%), Victorian Equal Opportunity & Human Rights Commission (VEORHC) (89%) and Ombudsman Victoria (73%)
 - **Recollection of having contacting ADR suppliers and other agencies:**
 - consumer disputes most frequently came to CAV (11%), followed by the BFSO (3%) and the TIO (3%).
 - family, neighbourhood & association disputes most frequently came to Relationships Australia (4%), VEORHC (3%) (workplace disputes)
 - government disputes most frequently came to Ombudsman Victoria (4%).
 - **Action taken when a dispute occurs includes:**
 - For serious consumer disputes one-quarter of Victorians tried to return or exchange the faulty goods (25%), while just over a half took the matter up with the seller or supplier (53%)
 - For serious family, neighbourhood and association disputes:
 - information or advice was commonly sought from a community Legal or support service (8%) & a government agency (7%)
 - third parties commonly contacted to lodge a complaint, seek mediation or take other action were the police

- (15%), lawyers (8%), a court (5%), VCAT' (4%); and community legal or support service (2%).
- the police were rated as the agency that most often gave assistance (8%)

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Targeting Serious Disputes (2)

ADR has barriers to access which are relatively lower than those for courts & tribunals.

ADR - factors driving assistance seeking

- incentives to use ADR are:
 - low cost (37%)
 - ease (24%)
 - speed of resolution (16%)
 - access to expertise (12%)
- disincentives to use ADR are:
 - cost (20%),
 - time involved in dealing with an ADR supplier (13%),
 - dispute may not justify the time and effort involved (9%)
 - difficulties in finding the right agency (8%)

Courts and tribunals - factors driving assistance seeking

- Advantages in taking a dispute to a court are:
 - where other options fail and they cannot resolve the dispute (10%)
 - achieve a final resolution (6%)
 - quicker resolution (5%)
 - obtain a legally binding decision (4%).
- Disadvantages in taking a dispute to a court are:
 - cost (52%)
 - time consumed and/or delays (37%)
- Concession card holders report cost and time at lower levels

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Reducing the Cost & Time of Dispute Resolution to Victorians

- The cost in both time and money of dispute resolution imposes a significant burden on the community and potentially discourages attempts at dispute resolution.
- Different approaches to ADR, affect disputing parties cost and time commitments:
 - referral between ADR schemes is a significant feature of the sector
 - processes telephone-based negotiations to face-to-face methods
 - intervention range from mediation to adjudication and different processes
- Research shows:
 - \$2.7b. cost to Victorians of resolving serious disputes in the 12 months to March 2007 (including expenses such as legal advice and other out of pocket costs, and the estimated value of time spent by the parties involved).

- 1.35m. hours - an ave of 5 hours per dispute spent dealing with the 3rd party in consumer disputes
- 1.24m. hours - an ave of 5 hours per dispute spent dealing with the 3rd party for family, neighbourhood & association disputes
- emotional costs for serious disputes are very high for:
 - 41% of disputes where a 3rd party was involved
 - 28% of disputes where a 3rd party was not involved

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Anticipating Consolidation & Focusing on Efficiency

- The sector's growth is a sign of its success as a means of resolving disputes. Some parts of the sector are reaching maturity while others are yet to reach that stage – suggested by the concurrent of growth in scheme numbers and consolidation activity:
 - consolidation is occurring e.g. call centres in the pioneering area of banking & finance industry ombudsman schemes
 - new schemes are being established e.g. Postal Industry Ombudsman, established in 2006
- **Consolidation offers cost efficiencies:**
 - from spreading fixed overheads and improving productivity of staff
 - is limited by the need for area specialists
- **Research shows:**
 - Highly concentrated sector, which suggests cost efficiencies from scale in contacts, mediations (non-determinative) and determinations:
 - over 1 million contacts (including complaints)
 - 85% in the top quartile, with individual service volumes ranging from 588,000 to 70,000 contacts
 - 8.7% in the second quartile - with service volumes of 40,000 to 15,000 contacts
 - 31,000 mediations - 71% in the in the top quartile & 20% in the second quartile
 - 102,000 non-court determinations - 99% were in the first two quartiles where VCAT's volumes accounted for 96% of all determinations
- **Cost efficiency is also relevant to decisions to:**
 - expand the jurisdiction of an existing scheme to cover an emerging area of disputes as an alternative to establishing a new scheme
 - offer ADR through a regulator or an industry ombudsman scheme

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Improving Service Consistency & Quality

- **Formal service standards take on a greater significance where:**
 - participation is mandatory & choice of ADR supplier is constrained, as maybe the case in court referral to ADR
 - disciplinary action can be taken against practitioners
- **Input standards affect service quality and can include:**
 - qualifications and experience of practitioners
 - available training

- **Accreditation for practitioners and training providers:**
 - affects the overall quality of ADR service and is relevant to private fee-for-service mediators
 - NADRAC is supporting work on national accreditation standards
- **Research shows:**
 - 7 of 18 schemes have mandatory mediation or legal qualification requirements for mediators
 - mediation qualifications are favoured over legal qualifications
 - 2 required both mediation & legal qualifications, 5 required mediation only, none required legal qualifications only
 - 11 of 18 schemes do not apply mandatory legal or mediation qualifications for mediators
 - mediation qualifications & legal qualifications are equally favoured
 - 4 emphasised mediation qualifications, 3 emphasised legal qualifications & 3 did not emphasise either
 - Accreditation of practitioners would be consistent with current practice in part of the ADR sector but would require changes for the majority.

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Improving Communication on the Performance of the ADR Sector

- **Reporting varies between schemes making sector performance difficult to assess:**
 - some schemes publishing extensive activity and performance information while others provide only some specific information
 - lack of a consolidated sector report
- **Research shows:**
 - Different uses of key terms such as mediation, conciliation and adjudication
 - Number of performance indicators used ranges between 6 and zero
 - No common performance indicators:
 - 9 agencies use *time taken to process a dispute* (elapsed time)
 - 6 agencies use *success rate*
 - Scheme specific forms of assessment, such as evaluations, file audits, user surveys are commonly used
 - There is limited consistent data on which to assess sector as opposed to individual performance.

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Conclusion

- The ADR sector has grown significantly over past decades demonstrating success in comparison with traditional approaches to dispute resolution
- The community has a significant capacity to resolve disputes without assistance
- There is still room for improvement, including:
 - Accessibility
 - Cost and time required to participate in ADR
 - Consistency in service standards

- Transparency of performance in stakeholders in the ADR sector

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Details

Research reports available at:

www.justice.vic.gov.au/

(look under *our about us* – then *goals*)

www.consumer.vic.gov.au/

(look under *Research, Reports and Discussion Papers*)